

PT 02-63

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

**KNOX COUNTY RURAL
IMPROVEMENT FOUNDATION**

Applicant

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

Docket #

00-48-53

A.H. Docket #

01-PT-0001

P. I. #

20-11-334-019

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Matthew C. Potts, Whitney and Potts, Ltd. for Knox County Rural Improvement Foundation; Mr. Kent Steinkamp, Special Assistant Attorney General for the Illinois Department of Revenue.

Synopsis:

Knox County Rural Improvement Foundation (hereinafter "Applicant") applied for a property tax exemption for Parcel Index No. 20-11-334-019 for the 2000 assessment year. The Knox County Board of Review recommended granting the exemption for 35% of the building on the subject parcel. The Illinois Department of Revenue (hereinafter "Department") denied the exemption finding that the applicant is not a charitable organization using the real estate for charitable purposes. Applicant timely appealed the determination and a hearing was held.

Wayne Wrage, director and president of applicant, and Claudia Emken, director of government and community relations for the Nature Conservancy in Illinois and elected

commissioner and president of the Elba-Salem Park District, were present and testified on behalf of applicant.

After a thorough review of the facts and law presented, it is my recommendation that the requested exemption be granted in part and denied in part. In support thereof, I make the following findings and conclusions in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

FINDINGS OF FACT:

1. The jurisdiction and position of the Department that Knox County Parcel Index No. 20-11-334-019 did not qualify for a property tax exemption for the 2000 assessment year were established by the admission into evidence of Dept. Ex. No. 1. (Tr. p. 13)

2. The Department received the request for exemption of the subject parcel from the Board of Review of Knox County. The board recommended granting a partial exemption for the areas used for the village office, police office, and restrooms. The Department denied the exemption finding that the property was not in exempt ownership and use. (Dept. Ex. No. 1)

3. Applicant's purpose according to its by laws and articles of incorporation is:

To provide an organization to aid, encourage, foster, and promote private citizens, community improvement organizations, community service organizations, corporations, foundations, and local government organizations in their efforts to improve and create needed community services and community facilities that will benefit and enhance the quality and enjoyment of life for the rural community residents of Knox County, Illinois and rural residents of the adjacent Illinois counties of Peoria and Fulton.

The corporation has the power to receive and administer any contribution, gift, bequest, real property, asset, bond, security, or other things of value. These assets will be used in fulfilling the charitable goals of the corporation or the charitable usages directed by the donors which comply with the requirements of Sec. 501(3)(c) [sic] of the Internal Revenue Service Code. Undesignated gifts may be used in maintaining the corporation. (Applicant's Ex. No. 1; Tr. pp. 72-73)

4. Applicant is exempt from the payment of federal income tax pursuant to a letter stating that it qualifies as a 501(c)(3) charitable organization under the Internal Revenue Code. (Applicant's Ex. No. 1)

5. Prior to 2000, a Yates City resident wished for a local community center (hereinafter the "Center"). She donated \$150,000 to initiate the project. Applicant's role was to facilitate the construction and financing of the center and to adapt and prepare the property for its ultimate donation to the Elba-Salem Park District. (Dept. Ex. No. 1 p. 25; Tr. p. 40)

6. Elba-Salem Park District was formed in March 1998 to take ownership of the center once it was constructed and all debt retired. (Tr. pp. 78, 82)

7. Applicant acquired the subject parcel by a corporate warranty deed dated June 16, 1999. The bank donated the property to applicant. (Dept Ex. No. 1; Applicant's Ex. No. 1; Tr. pp. 32-34)

8. On June 29, 1999, applicant received Knox County Zoning Resolution Construction Permit No. 12033 to construct improvements on the subject property costing \$340,180.00. The improvements are a 96' x 60' community center and office building. (Applicant's Ex. No. 1)

9. In 1999 the Yates City village hall facilities required more than \$100,000 worth of renovation. The village decided to lease part of the proposed center rather than modernize. Architectural plans for the new center include office space for the village police and city clerk. (Tr. p. 34)

10. The village agreed to pay a one-time fee of \$35,000 and a monthly fee of \$200 for the offices. The \$35,000 was paid on January 25, 2000. (Applicant's Ex. No. 1)

11. Construction of the center on the subject property commenced on June 29, 1999.

The center was opened on April 16, 2000. (Dept. Ex. No. 1; Tr. pp. 58-60)

12. The center contains a 14' x 18'10" area that is the village office of Yates City; a 14' x 11'6" room for the police department; a banquet hall/community room that is 60'2" x 58' and seats up to 270 people; a 19'10" x 15' kitchen; a 19'8" x 18' meeting room that holds about 30 people; a 10' x 7'6" storage area; and men's and women's restrooms. (Applicant's Ex. No. 1)

13. The center is used for meetings, family reunions, wedding receptions, and fundraisers. Entities that wish to use the center for one day are requested to complete a suggested donation agreement. The suggested donation for the use of the large banquet room is \$200 a day plus a security deposit of \$100. The security deposit is refunded if no damages occur. The suggested donation for the kitchen is \$50 and for the meeting room \$25. For benefit functions it is suggested that the center be contacted. (Applicant's Ex. No. 1; Dept. Ex. No. 1)

14. In 2000, nine events were held in the center where a donation was given. Twenty-four groups used the facilities without donations for one hundred-fourteen events and meetings. The twenty-four groups include *inter alia* the Red Cross, the Knox County Health Department, the Lions Club, Meals on Wheels, the Elba/Salem Park District, the Fire Department, and various political organizations. (Applicant's Ex. No. 1; Tr. p. 56)

15. Applicant submitted a document entitled "Summary Report 12/21/97 Through 12/31/2001" that shows income for the year 2000 of \$110,454.97. The income is broken down into the following categories: Contribution - \$9,956.75; Deposit Recvd. - \$1,000; FundRaiser - \$0; Grant - \$0; Interest - \$396.22; Loan Proceeds - \$59,000; Memorial - \$685; Monthly Main. - \$2,000; Refund - \$277; Usage donation - \$2,140; and Village - \$35,000. Overall income for the entire period is \$557,512.86. (Applicant's Ex. No. 1 p. 49; Tr. pp. 46-50)

16. The same document shows expenses of \$195,383.41 for 2000 and overall total expenses for 12/21/97-12/31/01 of \$570,000.92. According to the document, this results in a net

loss for the project of \$12,488.06. (Applicant's Ex. No. 1 pp. 49-50)

17. On January 24, 2000, a lease agreement was executed between applicant, the Village of Yates City (hereinafter "Village"), and Elba-Salem Park District (hereinafter "District"). The lease is for the police department office and village office. The lease is for twenty (20) years beginning March 1, 2000, with the option to renew for four (4) consecutive 20-year terms. The lease obligates the village to pay applicant \$35,000 on or before March 1, 2000¹ and to pay \$200 a month rent. The rent is to be reviewed and adjusted annually as needed. (Dept. Ex. No. 1)

18. The lease states that the district intends to acquire ownership of the subject real estate within 60 days of the release of the existing mortgage indebtedness. The district will assist the applicant with the management of the building prior to the acquisition. (Dept. Ex. No. 1)

19. Applicant executed a real estate mortgage loan with the United States Department of Agriculture for \$75,000 for the subject property on February 8, 2001. (Applicant's Ex. No. 1)

20. Applicant received two \$40,000 grants for a total of \$80,000 from Illinois FIRST funding for the construction of the new community center. The checks were dated November 21, 2001. (Applicant's Ex. No. 1)

21. The United States Department of Agriculture \$75,000 loan was paid off on November 28, 2001 with the Illinois FIRST grant funds. (Applicant's Ex. No. 1)

22. On December 18, 2001, applicant conveyed the subject property to the Elba-Salem Park District by a Corporate Limited Warranty Deed. (Applicant's Ex. No. 1)

CONCLUSIONS OF LAW:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the

¹ Paid on January 25, 2000. (Applicant's Ex. No. 1)

property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

Pursuant to the constitutional grant of authority, the legislature has enacted provisions for property tax exemptions. At issue is the provision found at 35 **ILCS** 200/15-65, which exempts certain property from taxation as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit: (a) Institutions of public charity.

Here, the appropriate exemption applies to institutions of public charity. Our courts have long refused to apply this exemption absent suitable evidence that the property in question is owned by an institution of public charity and exclusively used for purposes which qualify as charitable within the meaning of Illinois law. Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter "Methodist Old Peoples Home"). They have also ascribed to the

following definition of charity originally articulated in Crerar v. Williams, 145 Ill. 625, 643 (1893):

... a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

According to Methodist Old Peoples Home, institutions of public charity share the following distinctive characteristics: they benefit an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare-or in some way reduce the burdens of government; they have no capital, capital stock, or shareholders and earn no profits or dividends; they derive funds mainly from public and private charity and hold the funds in trust for the objects and purposes expressed in their charters; they dispense charity to all that need and apply for it, and must not provide gain or profit in a private sense to any person connected with it; and they do not place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits dispensed. The term “exclusively used” means the primary purpose for which the property is used and not any secondary or incidental purpose. Methodist Old Peoples Home at 157. These factors are not requirements but are guidelines to be considered in assessing an applicant’s charitable status. Du Page Co. Bd. of Rev. v. Joint Comm’n, 274 Ill.App.3d 461 (2nd Dist. 1995) *leave to appeal denied* (164 Ill.2d 561)

The appellate court applied the guidelines to a community center in Lena Comm. Trust Fund v. Dept. of Revenue, 322 Ill.App.3d 884 (2nd Dist. 2001) *leave to appeal denied* (196 Ill.2d 544) (hereinafter “Lena”). As pointed out by the applicant (Applicant’s Brief pp. 9-11, 15) and agreed to by the Department (Dept. Brief p. 4) the set of circumstances in Lena are remarkably similar to those developed at the hearing in this matter regarding the use of the property by others than the village. In Lena, the trust was gifted 2.69 acres of land in a town of about 3,000 people, to construct a two-story building to be used as a community center. Fees were charged for the use of the building ranging from \$5.00 charged to nonprofit groups for the use of the lower-level small meeting rooms to \$350 a day for the upper-level main hall and kitchen. The trust policy was to waive fees if a user was unable to pay, but in 1995, the taxable year at issue, no one requested a waiver. Also, no one requesting to use the center was denied. During 1995, 81% of the revenues for the community center were from donations and 19% were from rental fees.

The Lena decision was that the trust was a charitable organization using the property for charitable purposes. The court found that the trust did not place obstacles in the way of those

seeking to use the community center by charging fees. It relied upon the fact that Illinois courts have held that charging fees to a person who has the ability to pay will not destroy a charitable exemption. Small v. Pangle, 60 Ill.2d 510 (1975).

The applicant herein allowed 24 groups to use the center rent free for 114 events in 2000. Groups similar to the ones that used the Lena Community Center used the center at issue. About 1% or \$4,500 of the total of \$557,512.86 that applicant received for the center came from private entities for the rental use of the center. I find that the fact applicant charged fees to groups able to pay them does not negate the fact that the applicant dispenses charity to all that need and apply for it. Applicant has also established that no entity gains or profits from the venture, and obstacles are not placed in the way of those who need and would avail themselves of the charitable benefits dispensed. Applicant also benefits an indefinite number of persons for their general welfare.

Applicant asserts, and the Department does not contest, that applicant has no capital, capital stock, or shareholders and earns no profit or dividends. Based upon the Methodist Old Peoples Home guidelines, I find that applicant is a charitable organization that used a portion of the center for charitable purposes in 2000.

Regarding the portion of the building used for municipal purposes, applicant leases rooms in the center to the village for use as the police office and village clerk's office. The village paid \$35,000 in 2000, the taxable year at issue, as the initial payment on the lease. The village also paid \$200 per month in 2000 for the use of the police office and village hall. In Village of Oak Park v. Rosewell, 115 Ill.App.3d 497 (1st Dist. 1983), Oak Park leased land from the First Presbyterian Church for use as a municipal parking lot. The court found that lease and use did not qualify for a property tax exemption. In Oak Park the court discusses the fact that the exemption for municipalities turns solely on ownership of the property. Citing People ex rel.

Carr v. City of Chicago, 323 Ill. 68 (1926) the court found that there is no separate exemption for land used for municipal purposes as asserted by the village. The court stated: “[I]f we were to adopt plaintiffs’ position, [that property used for municipal purposes is exempt]we would add to section 19.6 of the Revenue Act an exemption clearly not within its contemplation.” *Id.* at 501

Similarly here, a portion of the building is leased to a municipality, Yates City, for municipal use as a village office and police department. The contract was executed between applicant and the village in the taxable year in question to lease the property for 20 years with four consecutive options for renewal. In 2000, the village paid the one-time fee of \$35,000. The monthly rent is \$200. Applicant received a total of \$4,454 (Applicant’s Ex. No. 1 p. 49) from the village as rental payments during the time it owned the subject property. Clearly this is a lease for profit and the area is not entitled to an exemption for 2000.

The 14’ x 18’10” area that is the village office of Yates City equals 263.66 square feet. The 14’ x 11’6” room for the police department is 161 square feet. The entire building is a 96’ x 60’ which equals 5760 square feet. Therefore, 7.4% [the percentage of the building used for the police department and village office] of the building on the subject property does not qualify for exemption for the 2000 assessment year.

Prior to the opening of the center on April 16, 2000, applicant was in the process of constructing the building. Illinois Courts have consistently held property to be exempt from taxation where it has been adequately demonstrated that the property is in the actual process of development and adaptation for exempt use. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971); People ex rel. Pearsall v. Catholic Bishop of Chicago, 311 Ill. 11 (1924); In re Application of County Collector, 48 Ill.App.3d 572 (1st Dist. 1977); and Weslin Properties Inc. v. Department of Revenue, 157 Ill.App.3d 580 (2nd Dist. 1987). I conclude that applicant was in

the process of constructing and using the center during the assessment 2000 year for exempt purposes, except for the village hall and police department areas.

For the aforementioned reasons, it is recommended that 93.6% of Knox County Parcel Index No. 20-11-334-019 be exempt from real estate taxation for the 2000 assessment year and that 7.4% be assessed to the applicant, the owner thereof.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge

Date: December 6, 2002